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Decision Making





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FBI Law Enforcement Bulletin

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Good Decisions

Tips and Strategies for Avoiding Psychological Traps

By BRIAN FITCH, Ph.D.



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Each day, law enforcement professionals throughout the nation make thousands of decisions. While many of these judgments require little, if any, conscious deliberation and involve few noteworthy consequences, others carry significant implications for officers, their organizations, and the public. Bad decisions can damage an officer's career, harm public trust, and expose an agency to costly litigation. Yet, despite the importance of good decision-making skills, most officers—and, for that matter, law enforcement managers and executives—receive precious little training in this area. Although everyone likes to believe they are good decision makers, relying exclusively on objective reasoning and logic, this simply is not the case. All officers harbor biases—invisible mental forces that influence what they notice, what they remember, and how they decide—that can dramatically affect the quality of their judgments.

While many bad decisions can be traced back to the way the choice was made—the options were unclear, relevant information was ignored, or the costs and benefits were not properly evaluated—in other cases, the mistake resides in one of the innate, systematic biases that appear hardwired to the

ways humans think and decide. For decades, economic theorists have championed the general-purpose model of decision making: the belief that people make decisions by identifying the problem, defining objectives, generating alternatives, evaluating possible solutions, and selecting the best option.¹ This model, however, is based on a number of fundamental assumptions about the way officers make choices, most notably that—

- the problem is clearly and properly defined;
- the decision maker has all of the relevant information;
- this individual carefully weighs the costs and benefits associated with each choice;
- the person is sufficiently motivated; and

- the process is free of bias and error.

Unfortunately, more than 50 years of research on judgment and decision making has failed to support this conclusion. It seems that humans are not the rational, objective decision makers they once were believed to be; rather, they are prone to a number of systematic thinking errors and biases that can sabotage their thinking and decisions in ways they are not even consciously aware of until it is too late.² The author outlines five decision-making biases—framing, overconfidence, selective attention, information overload, and emotions—that can interfere with effective decision making and offers tips and strategies to help officers improve their judgments by recognizing and mitigating the

powerful, yet unseen, sway of these psychological traps.

Framing

In simplest terms, a frame is a model, or lens, for understanding, interpreting, and solving a problem. Officers have a number of frames that they use to judge people, simplify problems, and make decisions. While framing a concern represents the initial step toward a successful resolution, it also is the first place a decision can go wrong. Because most problems can be framed, or looked at, in more than one way, the lens officers employ to define an issue can significantly influence how they respond. For example, framing a situation as emergent and requiring quick, decisive action will cause officers to act very differently than if they define it as something requiring a slow, deliberate solution.

The protests surrounding the World Trade Organization (WTO) Ministerial Conference of 1999 in Seattle, Washington, help illuminate the problems a police agency can encounter. By all accounts, law enforcement expected a limited number of relatively peaceful protests and press events led by a loose coalition of groups opposed to WTO policies, especially those related to free trade. Peaceful protestors had assured law enforcement officials that they would promptly quell any



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Dr. Fitch, a lieutenant with the Los Angeles, California, Sheriff's Department, holds faculty positions in the Psychology Department at California State University, Long Beach, and with the Organizational Leadership Program at Woodbury University.

activity by the small number of fringe activists expected to attend. The resulting civil disobedience took law enforcement officials completely by surprise. More than 40,000 protesters (a number that immensely overshadowed predictions) from a variety of groups (including a number of self-proclaimed anarchists) blocked streets and vandalized shops, ultimately costing the city an estimated \$23 million.³

What makes the sway of framing so perilous is that once officers label a problem, it fundamentally alters how they perceive it from that point forward—an experience so persuasive that it can affect them even when the label is assigned arbitrarily (by someone unfamiliar with the issue).⁴ It seems that once officers have labeled a problem, they lose the ability to remain objective. Instead, they experience unseen psychological pressure to make everything fit the frame, compelling them to notice what agrees with the label while ignoring information (regardless of how objective or relevant) that does not match up, a phenomenon referred to as frame blindness. And, as long as officers continue to cling to the frame, they cannot consider the problem in other ways—effectively limiting the field of possible solutions.

Yet, despite the importance of framing, officers too

often accept the first lens they receive, seldom stopping to evaluate the problem or reframe it in their own words. In other cases, rather than relying on conscious, objective processes, officers frame problems as a result of unconscious habits, preferences too often based on faulty notions, untested beliefs, or inaccurate assumptions.

“It seems that humans are not the rational, objective decision makers they once were believed to be....”

Tips for avoiding the trap: How officers frame a problem strongly influences what information and options are available. To help minimize the influence of framing, officers can employ some basic strategies.

- Pay special attention to the way the problem is framed. Do not simply accept the first frame given. This remains true regardless of who framed the problem.
- Frame the problem from a number of reference points and perspectives. A variety of frames allows the decision maker to evaluate the

problem from different angles, as well as allowing for a larger number of potential solutions.

- Continue to search for new ways to frame the problem, asking how reframing the problem might influence the decision.

Overconfidence

It seems that most people have a hard time evaluating their abilities objectively. Everyday life is riddled with examples of overconfidence: drivers overestimate their driving skills, students their test scores, couples their likelihood of staying married, employees their chances of promotion, and managers their investment and merger strategies. Whenever something goes wrong, it seems that human error is to blame. For instance, an estimated 70 percent of airplane crashes, 90 percent of car accidents, and 90 percent of workplace mishaps are attributed directly to human error—often in the form of overconfidence.⁵

The pervasive effects of overconfidence can impact law enforcement as well. For example, at a conference on police interrogation, an audience member asked if the psychological influence wielded by trained interrogators might compel an innocent person to confess. “No,” replied one participant, “because we don’t

interrogate innocent people.”⁶ In truth, although law enforcement officers rarely arrest or interrogate innocent people, not everyone charged with a crime is guilty. Allegations by vindictive spouses, scorned business partners, and angry family members have resulted in criminal investigations and—in some cases—prosecution.

Nor are the effects of overconfidence limited to the ways officers investigate crimes and interrogate potential subjects. A 5-year study conducted by the California Commission on Peace Officer Standards and Training on law enforcement officers killed and assaulted cited “overconfidence, complacency, and rushing in without a plan” as contributing to the majority of officer deaths.⁷ The same study reported traffic accidents as one of the primary sources of officer injury and death. Sadly, many of these cases involved only one vehicle (the officer’s) and were the direct result of officers driving too fast for their ability or the roadway conditions—in some cases, the direct result of overconfidence.

The psychological sway of overconfidence may cause officers to ignore any number of important clues or dismiss potential suspects or, in other cases, put their lives at risk. However, in spite of the dangers of overconfidence, most people, including law enforcement

professionals, do not see any need to improve the way they make decisions. Instead, they are quite convinced of their ability to reason objectively, as well as confidently optimistic about the future of their choices. It is, they believe, other people who need to improve their thinking.



Tips for avoiding the trap: Not only can officers’ assumptions blind them to other possibilities but it can delay investigations, squander resources, and put lives at risk. Some suggestions can help officers better manage the psychological quagmire of overconfidence.

- Examine assumptions carefully, especially those beliefs most strongly or confidently held. All people take certain beliefs and assumptions for granted—rather than checking periodically on accuracy, they simply assume these are true. Assumptions are dangerous, especially in police work.

- Try imagining all of the possible ways that something can turn out, especially all of the ways that something can go wrong.
- Appreciate the limits of knowledge and abilities. Good decision makers not only make a conscious effort to investigate and verify information but also recognize what they do not know. In many cases, what officers do not know can be more important than what they know.
- Actively solicit input and ideas from others, especially those with different experiences and opinions. Being open to ideas and criticism is critical at every stage of the decision-making process and, in many cases, may save lives.

Selective Perception

All officers make choices—some conscious, some unconscious—about what to notice, what to remember, and how to perceive the world. Selective perception occurs when officers focus on evidence that supports what they suspect as true while ignoring facts that might disconfirm those ideas, commonly termed confirmation bias.⁸ Most officers believe that they see the world in completely unbiased ways, but, in fact, they cannot avoid biases in perception.

The natural human tendency to look at the world selectively can cause officers to focus on irrelevant facts and information while ignoring important, relevant data that does not fit their preconceived notions. This is true even when something is right in front of their eyes.

Psychologists believe that the drive to confirm what people believe is true stems from their subconscious predisposition to decide how they are going to act before figuring out their reasons for doing so. Research on how jurors make decisions about the guilt or innocence of a defendant provides an excellent example of this principle at work. It turns out that jurors begin constructing a story about what probably happened at the scene of the crime during opening arguments and, then, selectively seek information during the trial that agrees with their accounts.⁹ Not surprisingly, selective perception tends to work closely with other biases in distorting thinking and judgments—for example, the more emotionally involved officers are with a belief, the more likely they are to ignore information that might undermine it.

Tips for avoiding the trap: Despite the natural inclination to look for supporting evidence, officers usually will find it more beneficial to seek contradictory evidence. By recognizing and acknowledging the unconscious

preference to weigh evidence selectively, officers have a better chance of recognizing and using material that they might otherwise overlook or that others fail to notice because of their biases. A few tips can help minimize the effects of selective attention.

The psychological sway of overconfidence may cause officers to ignore any number of important clues or dismiss potential suspects or, in other cases, put their lives at risk.

- Remain open-minded to disconfirming data that does not fit preexisting hypotheses or beliefs. This is especially important in light of the “pet theories” that everyone holds about the world and how it works.
- Stay open to different viewpoints, interpretations, and possible solutions, something that can be surprisingly difficult to do.
- Avoid the tendency to decide on a course of action and, then, search selectively for confirming

data to support the decision. Rather, consciously examine all of the available evidence objectively before reaching a decision.

- Try taking the perspective of a disinterested outsider. What questions would they ask? Where would they look for information? What assumptions would they question?

Information Overload

While the brain is capable of amazing things, it also has limitations. To begin with, attention—the energy used to carry out mental activities, such as thinking, understanding, and remembering—is severely restricted.¹⁰ Research on attention has consistently demonstrated that human beings are constrained in the number of things they can attend to at any given time. Although individual differences exist, most people cannot do more than one or two things at the same time. As most people can testify from experience, anytime they try to do too many things at once, they often end up doing nothing well and everything poorly, potentially missing critical information in the process.

It appears that the human brain relies on two main systems to process information. S1, referred to as implicit processing, is fast, automatic, and unconscious—at work whether

we realize it or not. S1 is concerned mostly with pattern recognition, “gut reactions,” and intuitive decision making. While its tremendous processing capacity can analyze large amounts of information, S1 is not particularly effective at dealing with novel problems. In addition, this system’s preference for speed and simplicity makes it vulnerable to a variety of cognitive biases. In contrast, S2, referred to as explicit processing, is slow, effortful, and logical, corresponding most closely to the rational model of decision making. S2 carefully frames the

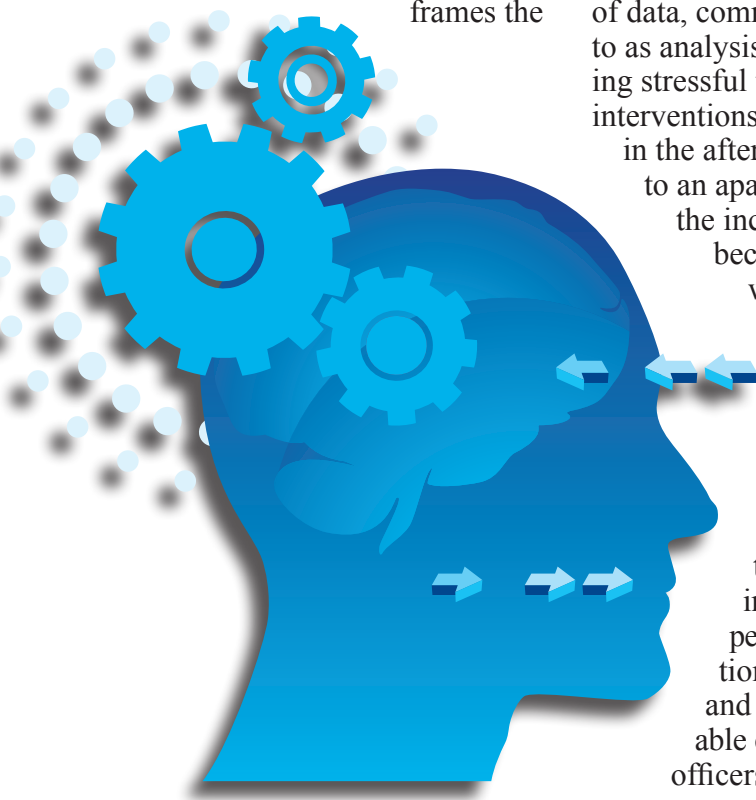
problem, searches for relevant data, and determines the best course of action.¹¹ Unlike implicit processing, however, S2 has a limited ability to evaluate data—typically restricted to no more than a few pieces of information at any given time while requiring considerable cognitive energy.

Although well trained to handle stress, law enforcement officers nonetheless can become overwhelmed by novel or complex incidents. In fact, the brain’s limited ability to process information undoubtedly contributes to feelings of being deluged by large amounts of data, commonly referred to as analysis paralysis, during stressful tactical or crisis interventions. For example, in the aftermath of an arson to an apartment building, the incident commander became so inundated with information and requests that he simply abandoned his post, opting instead to interview potential witnesses. Not surprisingly, this delayed the investigation, impeded the dissemination of information, and caused considerable confusion among officers at the scene.

Making the best decisions possible—particularly during novel or unfamiliar circumstances—often requires an officer to focus on several important pieces of information simultaneously, something the conscious mind has difficulty doing. As a result, officers often oversimplify complex problems into smaller, more manageable units, especially when they are busy, lack important information, or face time constraints.

Tips for avoiding the trap: Anyone, regardless of tenure, can be overwhelmed by large amounts of data. Some strategies can help officers avoid several of the pitfalls associated with information overload.

- Recognize the different roles of the S1 and S2 processes. Each system has its strengths and weaknesses and should be used appropriately.
- Because the conscious brain (S2) has a limited ability to process information, officers should slow down their decision making, especially when faced with divided attention, time constraints, or lack of important information.
- Learn to recognize the differences between S1 and S2 processes, paying special attention to which



one is being used to manage information, process data, and make decisions.

- Beware of S1's susceptibility to cognitive biases and, if necessary, consciously switch to S2 processing for a more careful and systematic analysis.

Emotions

Despite their best efforts to the contrary, officers' decisions are influenced by emotion—defined simply as intense feeling states, such as joy, anger, fear, sadness, or disgust, with correspondingly positive or negative connotations. While emotions serve as a guide for many types of decisions, they also can cloud rational judgments, particularly during highly stressful or high-stakes events. Certainly, most officers can recall a situation that turned out badly when strong emotions influenced their judgment. Thus, a clear understanding of how emotions affect the decision-making process is critical to everyone in law enforcement.

A growing body of evidence seems to suggest that thoughts and emotions stem from two different brains—one rational, the other emotional.¹² The rational brain, also termed the neocortex or cerebrum, accounts for almost 80 percent of the human brain and is the source of reason, logic, and

higher-order decision making. It is the part of the brain that represents consciousness, as well as the portion that makes language, speech, and writing possible. The emotional brain, commonly referred to as the limbic system, is the area responsible for learning and memory, as well as instinctive

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Not surprisingly, selective perception tends to work closely with other biases in distorting thinking and judgments....

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emotional responses, including fight or flight. Unlike the logical brain, it operates mostly outside conscious awareness, continuously scanning the environment for signs of danger, and, at the first indication of threat, primes the mind and body for action by releasing a cascade of hormones and neurotransmitters into the brain and bloodstream.

While the rational brain focuses primarily on the slow, deliberate processing of information, the emotional brain rapidly processes incoming sensory information for any

signs of danger. In fact, some experts argue that the quick, automatic, visceral reaction, along with bodily changes and the impulse to act, generated by the emotional brain developed principally as a survival response to the dangers faced by early humans.¹³ While the two brains normally operate in harmony, the emotional brain has evolved the ability to override the slower, more deliberate rational brain and, in doing so, effectively short-circuits logical decision making, significantly impairing an officer's ability to think rationally.

The influence of strong emotions may have contributed to confusion over the command and control structure among senior Los Angeles Police Department officers at the May Day 2007 demonstrations in MacArthur Park.¹⁴ A lack of unified command resulted in line officers receiving conflicting direction, whereas a number of requests from officers in the field went unanswered, including ones for action as officers were being struck with objects thrown from people in the crowd.

Tips for avoiding the trap:

One of the most difficult aspects of managing emotions is that people often ignore their influence, causing them to misidentify the reasons for their decision. Although unable to avoid the

influence of emotions, officers can harness the positive power of them by following a number of simple steps.

- Become aware of emotions and their influence. Rather than attempting to deny the influence of emotions, officers should increase their awareness by learning to monitor the changes in thinking, feelings, and behaviors that accompany affective responses.
- Ask questions about the source of the emotion. Is the emotion valid? Does it represent a real danger, an imaginary villain, or simply an ego threat?
- While emotions are a normal part of the decision-making process, excessive emotions—particularly anger, guilt, and fear—can significantly impair the ability to make sound judgments. Ask if the strength of the emotional response is appropriate under the circumstances.
- Once officers recognize the presence of strong emotions, they can consciously switch to the slower, more deliberate processes regulated by the logical brain.

Conclusion

Clearly, good decision-making skills are among the most important attributes

law enforcement officers can possess. While it may be impossible to eliminate bias and other reasoning errors from the decision-making process altogether, it is possible for sworn personnel to significantly improve the quality of their judgments. By increasing their awareness of the innate, systematic biases that often color their decisions, officers can better avoid—or at least minimize—the psychological sway of a

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number of decision-making traps. In fact, with a little effort and awareness, they can learn to pay better attention to how they frame problems, any feelings of overconfidence, the ways they select and evaluate information, how that information is processed, and the influence of strong emotions. And, by doing so, officers not only can improve the quality of their judgments but also their

confidence in the decisions they make. ♦

Endnotes

¹ For a more complete discussion of general-purpose models of decision making, see Stephen Robbins, *Essentials of Organizational Behavior*, 8th ed. (Upper Saddle River, NJ: Prentice-Hall, 2005).

² See, for example, Keith E. Stanovich, Maggie E. Toplak, and Richard F. West, “The Development of Rational Thought: A Taxonomy of Heuristics and Biases,” *Advances in Child Development and Behavior* 36 (2008): 251-285.

³ See *Seattle Police Department After Action Report: World Trade Organization Ministerial Conference, Seattle, Washington, November 29-December 3, 1999*.

⁴ For a more detailed discussion on the effects of framing, see Dan Ariely, *Predictably Irrational: The Hidden Forces That Shape Our Decisions* (New York, NY: Harper Collins, 2008).

⁵ For a review of the psychological literature on overconfidence, see Shelley E. Taylor and Jonathon D. Brown, “Illusion and Well-Being: A Social Psychological Perspective on Mental Health,” *Psychological Bulletin* 103, no. 2 (1998): 193-210.

⁶ See Saul Kassin and Gisli Gudjonsson, “The Psychology of Confessions: A Review of the Literature and Issues,” *Psychological Science in the Public Interest* 5 (2004): 35-67.

⁷ See California Commission on Police Officer Standards and Training, *California Law Enforcement Officer Killed and Assaulted in the Line of Duty: 1995-1999 Report* (Sacramento, CA: POST Media Distribution Center, 2001).

⁸ For a complete discussion of selective attention and bias, see Ori Brafman and Rom Brafman, *Sway: The Irresistible Pull of Irrational Behavior* (New York, NY: Doubleday Publishing Group, 2008).

⁹ For a complete review of selective attention and juror bias, see Nancy

Pennington and Reid Hastie, "The Story Model for Juror Decision Making," in *Inside the Juror: The Psychology of Juror Decision Making*, ed. Reid Hastie (New York, NY: Cambridge University Press, 1994), 192-223.

¹⁰ For a discussion of working memory, see Roger H. Burning, Gregory J. Schraw, Monica M. Norby, and Royce R. Ronning, *Cognitive Psychology and Instruction*, 4th ed. (Upper Saddle River, NJ: Prentice Hall, 2004).

¹¹ For a complete discussion of the dual process theories, see Daniel Kahneman

and Shane Frederick, "Representativeness Revisited: Attribute Substitution in Intuitive Judgment," in *Heuristics and Biases: The Psychology of Intuitive Judgments*, ed. Thomas Gilovich, Dale Griffin, and Daniel Kahneman (New York, NY: Cambridge University Press, 2002), 49-81.

¹² For a review of the roles played by thinking and emotion in decision making, see Drew Weston, *The Political Brain: The Role of Emotions in Deciding the Fate of the Nation* (Philadelphia, PA: Perseus Books Group, 2008).

¹³ See, for example, Daniel Goleman, *Emotional Intelligence: Why It Can Matter More Than IQ* (New York, NY: Bantam Books, 1995).

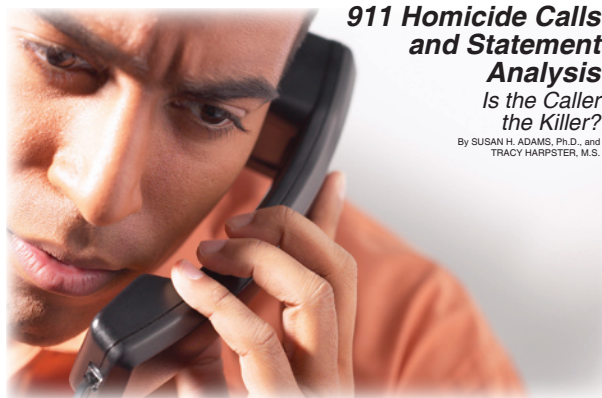
¹⁴ See *LAPD Final Report: An Examination of May Day 2007, MacArthur Park*. A report presented to the LAPD Board of Police Commissioners, October 9, 2007.

Readers interested in discussing this topic further can reach Dr. Fitch at bdfitch@lasd.org.

Bulletin Impact

The *FBI Law Enforcement Bulletin* staff strives to keep the magazine relevant and useful to readers. To this end, we feature, as an example of desired feedback, a brief summary of a recent letter that informed us how an article directly impacted a police investigation. The Winthrop Harbor, Illinois, Police Department had a suspect in custody for his involvement in the alleged murder of his mother. The department was nearing the end of the time that it could hold him and needed further evidence. Recalling the article "911 Homicide Calls and Statement Analysis" by Dr. Sue Adams (instructor and retired FBI special agent) and Lieutenant Tracy Harpster (Moraine, Ohio, Police Department) that appeared in the June 2008 issue, detectives contacted Lieutenant Harpster who immediately provided in-depth analysis of the original 911 call. Not only did he corroborate some of the detective's theories but also gave additional directions for questioning the suspect. Although this did not lead to a conviction, the department found the techniques described in the article helpful in its investigation.

The FBI Law Enforcement Bulletin seeks additional stories that illustrate the impact that articles have had on investigations, community problems, or other related issues. Please send a brief narrative describing the incident to Editor, FBI Law Enforcement Bulletin, FBI Academy, Outreach and Communications Unit, Quantico, VA 22135 or to leb@fbiacademy.edu.



**911 Homicide Calls
and Statement
Analysis**
*Is the Caller
the Killer?*

By SUSAN H. ADAMS, Ph.D., and
TRACY HARPSTER, M.S.



Leading the Modern Police Force A Veteran Officer's View

By JOSEPH PANGARO, C.P.M.

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What does it mean to lead a police force? That seems like a simple question. In the world of law enforcement, we have some rock-solid principles and some bedrock purposes. If we combine them with our goal of protecting residents and serving those who need our help, the outcome should be easy to predict. Our officers would go out into the streets and do what is necessary to get the job done. If it were only that easy.

The modern police force is extremely different from those of days gone by. That is not to say that our current mission has changed dramatically. People are people, and the needs of society change slowly over long periods of time. The basic functions of police work are static. Predators always will look for any opportunity to take advantage of the innocent. Human nature being what it is, we know that a percentage of our population always will attempt to

rob and rape. Unethical people will lie and cheat the elderly out of their retirement funds if the opportunity presents itself. Children will continue as targets for pedophiles. Our homes and property will remain fair game for burglars. The scourge of drug abuse will drive normally law-abiding people to acts of criminality. I could fill many pages with the types of crimes that always have been and always will be with us. That is the human condition and the world

in which we, as law enforcement professionals, operate.

Exploring the changing requirements and responsibilities associated with leading the men and women of the modern era of police work forms the focus of this article. For me, the changes in the world of law enforcement are not in the *work* we do but in the *people* who do the work.

Understanding the Differences

Police work is a people business. Most of us who have been in the profession for any period of time know this. Arrests, tickets, raids, and investigations all are elements of the job, but the real work is human relationships—people to people, person to person.

Any officer at any rank serving anywhere in the United States can attest that the people coming into the profession today differ significantly from those in the past. Although not a negative factor, it is something that we must understand and manage for the betterment of all involved.

Today's recruits grew up in a world that viewed the idea of simply doing what they were told without question as not a valid option. Many were taught to question authority at every level. If told what to do, they wanted to know why they should do it that way. If given

an explanation, they would ask if a better way to do it existed. These young people have received the generational categorization of the millennials.¹

I have found that many in this group have different motivations than those of us in previous generations. I loved overtime; it helped me provide for my family as I moved through the various pay scales and ranks. I loved being at work and doing the work. Today, I see a trend with younger people who do not view money as the greatest motivator but, instead, appear more concerned with their time off and other available lifestyle benefits. They are diligent workers and have tremendous skill sets to offer, but they see things differently. Demanding that they act and appreciate what past generations saw

as important is a futile exercise. They must be seen and valued for what they have to offer, and their needs and concerns must be figured into the equation. As leaders, it is our responsibility to do this.

Examining the Options

To understand the people we now will lead, we must look at our organizations and ourselves much closer. As a practical matter, law enforcement agencies are quasi-military organizations with ranks, rules, regulations, policies, and written directives that set the internal boundaries in our departments and the basic parameters of how to deal with the public. Technology moves at lightning speed, enabling us to file papers and create new policies and directives in record time. Unfortunately, what gets

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Lieutenant Pangaro serves as a supervisor and training officer with a police department in Monmouth County, New Jersey.

lost in the shuffle is our people, especially the young members of the modern police force.

How we deal with our people often lags behind all of the other changes that have occurred in the profession. In many instances, we cling to old ways and practices that do nothing to move us forward and lead our people in the most appropriate way. It is time for those of us in leadership positions to do a top-down review of how we run our organizations, starting with our own actions, styles, and practices. Just because “that’s the way we have always done it” does not mean we have to continue with those models. We must ask ourselves if we are functioning in the best way possible, regardless of our own personal preferences and desires. If we are not, then we should change the way we operate. We must look forward at what could be, compare it with the lessons from the past, and develop improvements based on the combined experiences of all involved. In short, as leaders, we must evolve.

My years of experience—both in law enforcement and, more important, in my life as a member of society—have revealed what I believe are some important lessons in regard to leading effectively. I start with the basic premise of leadership: the goals and, most of all, the responsibilities of being a leader.

Does being in charge make a person a leader? Obviously, the chief executive of any organization, by virtue of the position, is a leader. The better question is, Does simply being “in charge” make someone an effective leader? The answer is clearly no. All of us can think of individuals in leadership positions who give orders, make rules, issue edicts, and demand everyone’s obedience, but they

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***...the people
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do nothing to better their people or their organizations. This type of leader harkens to a different time. In police work, most of us can conjure up stories of old-time chiefs who ruled with an iron hand or stayed locked away in the office. We rarely saw them; when we did, they seemed an almost mythical figure. Fortunately, such leaders have mostly disappeared from the scene at this point, but they were the model for many of us in earlier generations. I am

suggesting that we learn from the past, take what was good from it, and then move on. It is time for a paradigm shift in leadership practices.

So, if simply being in charge does not make someone an effective leader, what does? I believe that being a good leader requires changing the way we view the art of leading. There always will be a time for the autocratic leader. On many occasions, our business demands immediate, forceful, and decisive action on the part of those in charge. We must be able to give direct orders and have them followed without hesitation. Sometimes, lives depend on this. That being said, however, I do not believe that such situations represent the best examples of where leadership takes place. Effective leadership is more than that, more than just driving the tank into battle.

Making the Choice

With all of this in mind, an important question is, What can help the leaders of tomorrow be the best they can? In this context, I suggest that we can begin by adopting four basic concepts.

First of all, being an effective leader is a choice. As with anything else we want to do and do well, we must make choices. We must replace “because I said so” with “what is best for my people, not necessarily good for me.” This is where the hard

work takes place. Many people have spent the majority of their careers pursuing a leadership position. When they get there, they lose perspective on what their main goal and focus must be: their people, not their own career track.

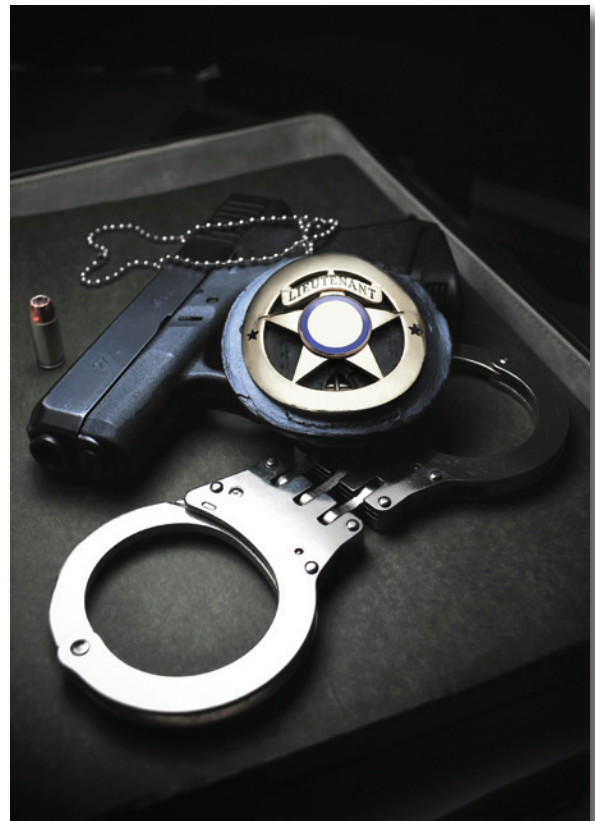
Next, we must own the principle of “servant leadership.”² The more we advance in the chain of command, the more we owe to those in the positions below. Doing what needs to be done to make their jobs easier is the key obligation of this principle. We must work tirelessly to assist them in anyway we can, such as providing guidance, counseling, and positive critiques; listening, not just hearing them; and appreciating them and working for *their* career goals, not just our own. Selflessness is incumbent to this type of thinking. The choice here involves foregoing the belief that because we have obtained a leadership position, whatever we think has to be right and everyone should do what we want simply because we are in charge. This can kill morale and displays poor leadership qualities. People do not follow poor leaders; they tolerate them. As leaders, our goal should be to make our people better, not to have them merely tolerate us. We must take an active role in their work lives and always be available. We teach best by allowing others to try using their

own skills. If more than one way exists and the immediate outcome is not critical, we should let our people choose their own path to the objective. The experience they gain in the effort and the trust and confidence they receive from us can provide the greatest reward.

Third, loyalty is a two-way street, but it starts with the leader. Effective leaders must be the first to show unconditional loyalty to their people by standing up for them in every instance and looking out for their needs, both personal and professional. In the old paradigm, leaders demanded loyalty. In return, they doled out privileges to the loyal. These leaders received loyalty only on the basis of better assignments, promotions, and other material benefits. The depth of that loyalty was shallow indeed and nonexistent when the treasury ran out. On the other hand, loyalty based on how leaders look out for their subordinates is almost bottomless and constantly refilled. When our people believe that we are there for them and the organization and not

solely for our own needs, they respond in kind, which creates credibility.

Finally, succession planning should be paramount for all leaders. Instead of concerning themselves with their legacies and achievements, effective leaders prepare their people to take over for them. As a leader, I feel no greater satisfaction than to have my people take what I have to teach and rise to their potential. My goal does not end there; my mission is to assist my people in eclipsing my record. My legacy is not borne on my achievements but on the achievements of those I have taught. It is through



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their success that my journey as a leader is completed and my career justified. I want *them* to surpass *me*.

Conclusion

Servant leadership principles require sacrifice on the leader's part because they are not always easy to live. They are a process and a belief system that puts leadership on a new path. For many people, these concepts will seem strange and unconventional. They are, but I believe our profession is at a point where we, as leaders, must assume a new role, accept additional responsibilities, and understand the changes in the culture and the people coming into our profession. We must lead with a dedication to our core principles and purposes and our people first. ♦

Endnotes

¹ Diane Thielfoldt and Devon Scheef, "Generation X and the Millennials: What You Need to Know to Mentor the New Generation," August 2004, <http://www.abanet.org/lpm/lpt/articles/mgt08044.html> (accessed August 3, 2009); and Craig Junginger, "Who Is Training Whom? The Effect of the Millennial Generation," *FBI Law Enforcement Bulletin*, September 2008, 19-23.

² For additional information on the concept of servant leadership, see the Robert K. Greenleaf Center, Inc., at <http://www.greenleaf.org/index.html> (accessed August 3, 2009).

The author invites readers interested in this topic to contact him at jpangaro@yahoo.com.

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Format: Authors should submit three copies of their articles typed and double-spaced on 8 1/2- by 11-inch white paper with all pages numbered, along with an electronic version saved on computer disk, or e-mail them.

Criteria: The *Bulletin* judges articles on relevance to the audience, factual accuracy, analysis of the information, structure and logical flow, style and ease of reading, and length. It generally does not publish articles on similar topics within a 12-month period or accept those previously published or currently under consideration by other magazines. Because it is a government publication, the *Bulletin* cannot accept articles that advertise a product or service. To ensure that their writing style meets the *Bulletin's* requirements, authors should study several issues of the magazine and contact the staff or access <http://www.fbi.gov/publications/leb/leb.htm> for the expanded author guidelines, which contain additional specifications, detailed examples, and effective writing techniques. The *Bulletin* will advise authors of acceptance or rejection but cannot guarantee a publication date for accepted articles, which the staff edits for length, clarity, format, and style.

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Successful Leadership Training

Leading is hard. Not because leadership behaviors and concepts are hard to execute but because the resistance to those behaviors and concepts is strong. We return from leadership training seminars with notes and binders full of guidance on how to “articulate a vision,” to “think outside the box,” and to “be innovative.” This inspires us to think and act in a new and original manner for both personal and organizational enhancement. However, sometimes, rather than being encouraged to develop new ideas and try new solutions, we in law enforcement are placed under tremendous pressure to do the job as it always has been done—to “not rock the boat.” Often, both our superiors and subordinates actively resist change.

To make leadership training worthwhile, an organizational entity must create a culture that fosters leadership development. Individuals are not leaders merely by virtue of the job or position held. They are true leaders only if genuine leadership behaviors are exhibited. That requires personal commitment from the top of the law enforcement organization. Truly effective law enforcement senior executives commit to the development of their leaders by identifying those in the organization who have strong potential and then by taking the time to personally coach them. Rather than waiting for volunteers, they actively recruit. These senior managers recognize the power that evolves from actively developing their own internal

leadership system and personally coaching their subordinates at all levels throughout the organization. In particular, senior law enforcement executives can create and foster a progressive organizational leadership environment by devoting their time to discussions with employees that emphasize the significant and important concepts learned from recently attended training. These new concepts and ideas then may be actively incorporated and employed as a foundation for both the con-

tinued development of the individual officer and the creation of innovations for the organization. The

more senior commanders develop the ability and willingness to personally engage talented subordinates to develop new concepts and put them into practice, the better off the entire organization becomes.

The cultural change required to ensure that law enforcement leadership training will succeed begins when the entire organization recognizes that those officers in the top management positions have the privilege of serving the public and are accountable for the responsibility they have accepted. To this end, they must exhibit and ensure continuity of organizational leadership behaviors. ♦

Special Agent Scott W. Olson, a squad supervisor in the FBI's New York office, prepared this Leadership Spotlight.

Training

Bullying in Schools

The U.S. Department of Justice, Office of Community Oriented Policing Services (COPS) has released *Bullying in Schools* in support of renewed local efforts to prevent the consequences of bullying. The publication provides school administrators, teachers, counselors, and law enforcement officials with practical information on how to identify bullying behavior, reduce the incidence of bullying, and mitigate its impact. It also offers guidance to officials on how to determine the extent of bullying in their schools, to address its causes, and to develop effective practices that contribute to student safety.

Bullying has two key components: repeated harmful acts and an imbalance of power. It involves repeated physical, verbal, or psychological attacks or intimidation directed against victims who cannot properly defend themselves because of size or strength or because they are outnumbered or less psychologically resilient.

"Bullying was once viewed by some as a relatively harmless behavior that was an expected part of adolescent interaction," said COPS Director Bernard K. Melekian. "However, we now know that bullying can have a long-term affect on both the bully and the victim, it can lead to other forms of school-based violence, and the advent of cyber-bullying can further exacerbate consequences."

Victims of bullying are more likely to exhibit health problems, have declining grades, contemplate suicide, skip school to avoid being bullied, and experience feelings of depression and low self-esteem that can persist for years after the incidents. Research conducted in three countries also has shown that bullies themselves are much more likely to develop a criminal record.

Bullying in Schools can be downloaded from the COPS Office Web site at <http://www.cops.usdoj.gov/files/RIC/Publications/e07063414-guide.pdf> or ordered at no cost by contacting the U.S. Department of Justice Response Center at 800-421-6770.

Jail Planning

Jail Planning and Expansion: Local Officials and Their Roles, from the National Institute of Corrections, describes a process to help elected officials and other policymakers develop jail facilities. This second edition of the publication outlines all participants' roles, the decisions they make, and the products they create. Readers interested in reviewing the entire document (NCJ 230031) may access it at the National Criminal Justice Reference Service's Web site, <http://www.ncjrs.gov>.



The Minnesota Police Education Requirement A Recent Analysis

By SUSAN M. HILAL, Ph.D., and TIMOTHY E. ERICKSON, M.A.T., M.S.E.

Several decades of research concerning the relationship between higher education and policing has led to little agreement concerning the appropriate extent of education for entry-level law enforcement officers. Clearly, officers with little formal education have effectively protected and served citizens throughout the history of policing in the United States. Despite this, however,

academics and practitioners, as well as organizations and national commissions, have repeatedly argued for more formal education requirements for the police. They often posit that the movement from traditional policing to community-oriented problem solving requires skill sets, such as critical and analytical reasoning, enhanced understanding of socioeconomic causes of crime, and advanced

interpersonal and intercultural communication, that are best developed in higher education programs. These arguments have not translated into action, and few law enforcement agencies mandate anything beyond a high school diploma for entry-level officers. As recently as 2003, only 9 percent of police departments nationally required a 2-year college degree and 1 percent a 4-year degree.¹

Despite the apparent lack of a national movement toward higher education in policing, the state of Minnesota has had a 2-year degree requirement for entry-level police officers for more than 30 years. In addition, Minnesota has conducted two statewide studies of the education levels of its police officers, the most recent in 2008. The authors present a discussion that reviews the key findings of this latest police education study.

HISTORICAL OVERVIEW

In 1977, Minnesota policy makers passed legislation that created the first licensing system for police officers in the United States and established the Minnesota Board of Peace Officer Standards and Training

(Minnesota POST), which has the authority to both license and determine minimum education requirements for all new police officers in the state. In 1978, Minnesota POST identified a 2-year college degree as the minimum education requirement for all new entry-level officers. In 1990, the first statewide study of the Minnesota model took place in response to the introduction of initial legislation that would have raised the entry-level requirement for police officers in Minnesota to a 4-year degree after January 4, 1994.² The study, conducted in two parts, collected data that provided an overview of education levels and related characteristics of police officers, perceptions of degree requirements, and demographic data.

One key recommendation of this first study—to not raise the entry-level requirement to a 4-year degree—was accepted, and the 2-year degree continues as the minimum requirement in Minnesota.³

CURRENT STUDY

The authors conducted the 2008 study to assess the effect of the 2-year degree requirement on overall education levels of current officers over the nearly 20 years that have elapsed since the first study. In addition, they examined officer perceptions of the issues related to and associated with the formal education requirements. Because the research instrument used in the current study essentially replicated the 1990 one (with several new items added), it enabled the analysis and comparison of the relationships between the key variables of both studies.

Participants

The authors obtained a list of all of the 9,386 licensed, full-time officers working in city or county law enforcement agencies in May 2008 from Minnesota POST. They sent a self-administered survey to a random sample of the officers, using a random number generator. From the final sample size of 1,099 officers, 627 of them returned the survey, representing a 57 percent response rate. The survey consisted of 30



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Mr. Erickson, a retired police officer, is an assistant professor in the School of Law Enforcement and Criminal Justice at Metropolitan State University in St. Paul, Minnesota.

questions or items, 29 closed-ended and 1 open-ended.

Results of the analysis indicated that approximately 86 percent of the respondents were male, 56 percent were under the age of 39, 93 percent identified themselves as white, 69 percent held the position of patrol officer, and 52 percent reported having 12 or more years of experience in policing. Approximately 73 percent were employed by a municipal police department, 44 percent served in agencies with more than 56 police officers, and 62 percent worked in a metropolitan region.

Key Findings

Using census data from 2000 as a comparison, Minnesota officers appeared more educated than the general population in the state. A little over one-third (34.7 percent) of Minnesota officers in the 2008 survey had a bachelor's degree, whereas 27.4 percent of Minnesota residents had attained an equivalent level of education.⁴ An additional 14.2 percent of Minnesota officers had earned credits beyond the bachelor's degree (6.8 percent) or held a graduate degree (7.4 percent), indicating that nearly 50 percent of Minnesota officers possessed a bachelor's degree or higher, approximately 13 percent above the general population. In addition, the 2008 survey indicated that 31 percent of officers had a

2-year degree, 16.2 percent had college credits beyond one, and only 3.9 percent had less than a 2-year degree. By comparison, in the 1990 survey, only 29.4 percent of officers had a bachelor's degree or higher, 21.2 percent had a 2-year degree, 20.8 percent had college beyond a 2-year degree, and 28.5 percent had less than a 2-year degree.

“Using census data from 2000 as a comparison, Minnesota officers appeared more educated than the general population in the state.”

In terms of monetary incentive for further education, police departments seemed to have increased financial support of education for officers. In the 2008 survey, 52 percent of officers advised that they received some form of tuition reimbursement for taking college-level courses (42 percent of officers reported having taken college-level courses since being hired by their agencies). In the 1990 survey, only 37 percent of officers identified their department as providing tuition assistance, indicating that tuition reimbursement had increased 15

percent since the 1990 survey. In 2008, 14.3 percent of officers identified that earning a degree resulted in a salary increase. This represented a decrease from the 1990 survey when 19.2 percent indicated that they would receive a salary increase. Responding to an additional item in the 2008 survey, 9 percent of the officers stated that their agencies increased the entry-level salary at time of hire if the new officer had a bachelor's degree. The 1990 survey did not include this item.

Officer perceptions of the education requirements needed for supervisory positions increased as the rank structure rose. As illustrated in table 1, officers perceived that a bachelor's degree or higher was required for promotion to the ranks of chief (40.3 percent), captain/commander (28.3 percent), lieutenant (21 percent), and sergeant (12.9 percent). Furthermore, when asked whether they felt that by either policy or practice their departments would require more formal education for promotion in the future, 33.6 percent of the officers said yes, 53.1 percent no, and the remaining were not sure.

Interestingly, fewer officers in the 2008 survey believed that a 4-year degree should be the minimum education requirement for licensure as a police officer. In 2008, 30.8 percent thought that a bachelor's degree

Table 1

Officer Perceptions of Education Requirements for Promotion

| Requirements | Sergeant | Lieutenant | Captain/ Commander | Chief |
|-----------------|-------------|-------------|-----------------------|-------------|
| 2-year degree | 278 (45.4%) | 161 (29.4%) | 126 (21.4%) | 68 (12.7%) |
| 4-year degree | 76 (12.4%) | 108 (19.7%) | 128 (21.8%) | 139 (25.9%) |
| Graduate degree | 3 (.5%) | 8 (1.3%) | 38 (6.5%) | 77 (14.4%) |
| No minimum | 204 (33.3%) | 170 (31.1%) | 154 (26.2%) | 66 (12.3%) |
| Not sure | 52 (8.5%) | 100 (18.3%) | 142 (24.1%) | 186 (34.7%) |
| Total | 613 | 547 | 588 | 536 |

should be the minimum requirement, whereas 40.6 percent of the officers in the 1990 study supported this stipulation. However, when asked whether they still would have entered police work in Minnesota if the 4-year degree requirement had existed, 70.4 percent of officers responding to the 2008 survey indicated that they would; this represented approximately 13 percent more officers than in the 1990 survey. Of note, response to this item depended on the officers' years of service; those with more years were less likely to support the entry-level requirement of a 4-year degree.

Officer perceptions of what *should* be the minimum education requirement for promotion to the various rank structures indicated that the higher the rank, the more formal education should be required. Approximately 71 percent of officers thought that a chief should have at least a bachelor's degree, 66 percent for captain/commander, 56.9 percent for lieutenant, and 40.6 percent for a sergeant. Table 1 shows that these percentages are greater in all rank areas than the perceptions of the education level that officers believed were currently needed to attain these supervisory positions.

CONCLUSION

The Minnesota experience seems to suggest that some sort of minimum education requirement beyond the high school diploma or its equivalency is a viable option for policing standards. It appears that the Minnesota model has successfully increased the education level of all officers and that support for higher education is favorable among Minnesota officers. Whether increasing entry-level requirements beyond the relatively universal standard of the high school diploma is necessary or even of value continues to be widely discussed and

debated. Because Minnesota remains the only state to require a postsecondary degree for entry-level licensing, it proves difficult to compare Minnesota with any other state at this time.

It seems that a further avenue of investigation would be to replicate the most recent Minnesota study in other states and to compare the current education level of those states' officers with that of Minnesota officers. This comparison might identify whether the Minnesota experience of increasing levels of formal education of police officers is a direct result of the postsecondary degree requirement or merely a reflection of a possible increase of education level of police officers

nationally. Furthermore, examining the perceptions of officers from diverse geographic locations and various agency sizes might add to the discussion and analysis of the current state of police officer education.

Clearly, the primary mission of police work is to protect and serve. How to best achieve this as communities change, strategies and tactics of law enforcement improve, and the expectations of policing continue to grow, remains unanswered. It also is clear that entry-level education requirements for officers at the municipal, county, and state level have not substantially altered in the past century. Perhaps, the Minnesota model can help lead to incremental increases in

overall law enforcement officer education levels. ♦

Endnotes

¹ M.J. Hickman and B.A. Reaves, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Local Police Departments, 2003* (NCJ 210118), May 2006, <http://www.ojp.usdoj.gov/bjs/pub/pdf/lpd03.pdf> (accessed January 25, 2009).

² Minnesota Board of Peace Officer Standards and Training, *A Study of the Minnesota Professional Peace Officer Education System*, (St. Paul, MN, 1991).

³ For a more thorough discussion of the Minnesota licensing process and a summary of the 1990 survey, see M.G. Breci, "Higher Education for Law Enforcement: The Minnesota Model," *FBI Law Enforcement Bulletin*, January 1994, 1-4.

⁴ Minnesota State Demographic Center, *Educational Attainment in Minnesota*, March 2003, <http://www.demography.state.mn.us/PopNotes/EducationalAttainment.pdf> (accessed February 14, 2009).

Wanted: Notable Speeches

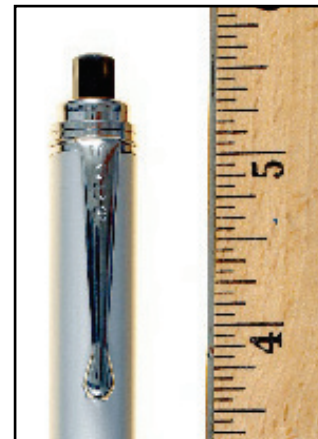
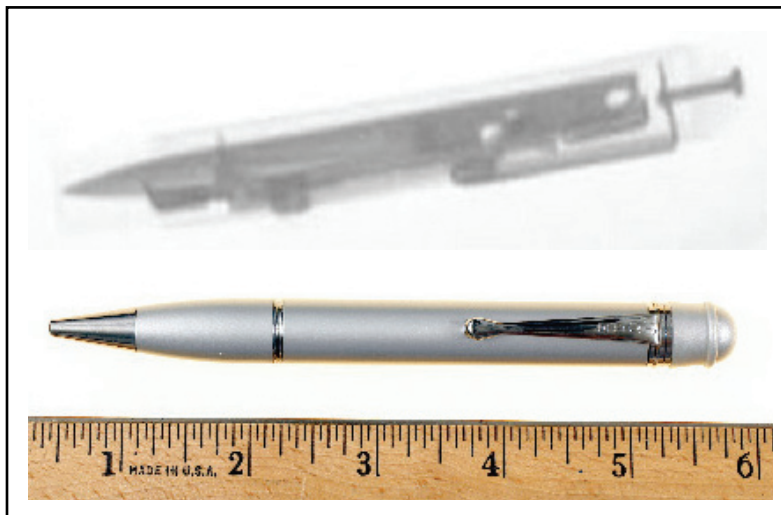
The *FBI Law Enforcement Bulletin* seeks transcripts of presentations made by criminal justice professionals for its Notable Speech department. Anyone who has delivered a speech recently and would like to share the information with a wider audience may submit a transcript of the presentation to the *Bulletin* for consideration.

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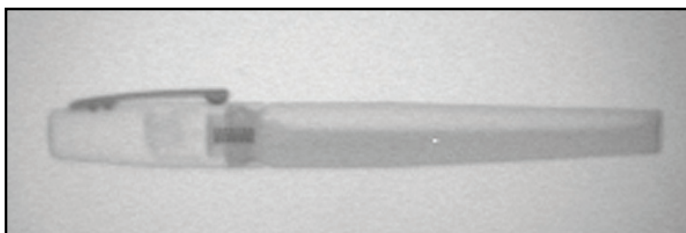
Unusual Weapons

Pepper Spray Pens

Law enforcement officers should be aware that offenders may attempt to use this pepper spray pen. This plastic device has a spray nozzle concealed under the cap that dispenses capsaicin spray when depressed.



Although this plastic and metal item looks like an ink pen, it actually can eject pepper spray. This device can pose a serious threat to law enforcement officers.



Police Practice



“...the sheriff implemented the Safe Guard Program, which links emergency dispatchers with elderly residents via phone calls on a daily basis.”

Community Policing *Implementing Programs to Keep Citizens Safe*

By Douglas A. Bryant

One of the most disturbing calls any agency receives involves possible danger to the elderly or to individuals with mental challenges. Stories related to those suffering from dementia wandering away from their homes appear too often on news programs. Law enforcement's most important responsibilities are serving and protecting citizens. To that end, agencies participate in and develop programs based on the needs of their community. The Richmond County, Virginia, Sheriff's Office implemented strategies to ensure that it takes every precaution to keep residents safe.

RICHMOND COUNTY'S EFFORTS

Richmond County is located on the Northern Neck Peninsula in the eastern portion of Virginia. The Rappahannock River forms the southern

boundary of this 192-square-mile rural community, home to approximately 9,000 residents. The local sheriff's office employs 17 sworn members and receives over 8,000 calls each year for law enforcement and emergency services. The agency currently offers two specific initiatives aimed at safeguarding particular groups of citizens.

Project Lifesaver

In Pittsylvania County, Virginia, a 45-year-old man suffering from a traumatic brain injury became lost and disoriented. A deputy sheriff specially trained and equipped by Project Lifesaver located the man 1.5 miles from his home within 20 minutes. A traditional search normally would have involved the time and expense to taxpayers of up to 264 searchers and 924 man-hours.¹ In another

case, a 79-year-old man with Alzheimer's disease left his house in Chesapeake, Virginia, driving his truck and could not find his way back home. After searching the neighborhood, a police helicopter was called in with a Project Lifesaver team and equipment. In just 35 minutes, the helicopter located the man via the signal transmitted from his bracelet. He was found 14 miles from his home. Before joining Project Lifesaver, the man had wandered off and was missing for 2½ days.

Project Lifesaver, a nonprofit organization founded by public safety officers, aids people with Alzheimer's disease and related mentally dysfunctional disorders (ARMD), such as Downs Syndrome, traumatic brain injury, and autism, and their families by distributing electronic bracelets to those with the history of or a potential for wandering (72 percent of wanderers repeat). Each bracelet has a unique frequency that can be tracked and located by specially trained search and rescue personnel using receivers tuned to the appropriate frequency. The transmitters can locate victims in a matter of minutes, rather than hours or days. In over 1,800 searches, no serious injuries or deaths have been reported and recovery times average less than 30 minutes. Further, when these victims are located, they can be disoriented, anxious, or untrusting. Project Lifesaver teams are specially trained on how to approach these people, gain their trust, and put them at ease to transport them home. Such individuals are victims just as if they were criminally attacked because ARMD physically robs them of their mental faculties, dignity, health, and, ultimately, their lives.

The Richmond County Sheriff's Office currently distributes Project Lifesaver bracelets to

local residents. Families or caregivers interested in the program contact the department and submit information on behalf of ARMD individuals. The project coordinator reviews each request for possible acceptance.

The Safeguard Program

In 2004, the sheriff implemented the Safeguard Program, which links emergency dispatchers with elderly residents via phone calls on a daily basis. Senior citizens who live alone and are interested in participating complete paperwork with contact information to be included in this free service. Dis-

patchers call participants each day to check on their safety and address any concerns. If they do not connect with each senior on the list, they continue attempts to contact them until located. One resident described that when a deputy came to check on her one night, he eventually found her at a bridge game with 80 other women in a neighboring county. "Suddenly, a deputy appeared and asked for me. They're always cheerful," she said. Another added, "They're

[officers] always forgiving when we forget." A local minister attended one of the program's events and advised, "It's one of a kind and offers a real sense of security to know that if they can't find you, they'll come and find you." The program has genuine benefits for seniors living alone, whether they have local relatives or rely on out-of-town family.

Funding Concerns

All law enforcement agencies face budget restraints today. Therefore, obtaining additional resources can present unavoidable burdens on localities. Funding can be obtained from a variety

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”

of sources, such as private citizens, churches, corporations, and civic organizations. All donations to Project Lifesaver are used for program equipment, rescues, and educational expenses.

CONCLUSION

Law enforcement leaders consistently search for and evaluate unique and innovative ways to protect and serve citizens in their communities. Often, groups of people with specific needs inspire private and public agencies to employ additional methods and programs to ensure residents' safety.

The Richmond County, Virginia, Sheriff's Office and local citizens have discovered the numerous benefits to incorporating Project Lifesaver and the Safeguard Program to meet the challenges of protecting individuals with Alzheimer's disease

and related mentally dysfunctional disorders and guaranteeing the safety of elderly citizens. Proactive planning can prepare agencies if unfortunate scenarios of ARMD individuals wandering from their home or elderly residents who live alone becoming incapacitated occur in their jurisdiction. Most of all, having such resources and strategies in place not only may help provide families with a sense of security but save lives as well. ♦

Endnotes

¹ Information in this article regarding Project Lifesaver is available from <http://www.projectlifesaver.org>.

Sheriff Bryant heads the Richmond County, Virginia, Sheriff's Office.

Bulletin Honors

Dearborn Heights, Michigan

The Dearborn Heights, Michigan, Police Department presents its memorial, erected in the spring of 2007 following the tragic on-duty death of one of the agency's officers in 2006. The memorial is dedicated to the department's only two officers killed in the line of duty, Officer Robert Dowidait (1966) and Corporal Jason Makowski (2006). The monument was dedicated in May 2007 on the first anniversary of Corporal Makowski's death.



Family and Medical Leave Act Amendments

New Military Leave Entitlements

RICHARD G. SCHOTT, J.D.



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As we settle into this new decade, our country's military embarks on its tenth year of the mission to combat terrorism in Iraq and Afghanistan. With that commitment comes immense sacrifice, by both military personnel and their families and other loved ones. It also comes with an expense to those who employ these modern-day patriots and those close to them. Among the sacrifices required by these employers is the legal obligation to be without certain employees

because of specified military obligations and other situations brought on by military service. The 2009 amendments to the Family and Medical Leave Act (FMLA) contained in the National Defense Authorization Act for Fiscal Year 2008 (2008 NDAA),¹ which became effective on January 16, 2009, add to this obligation. The 2009 amendments were expanded again by amendments contained in the National Defense Authorization Act for Fiscal Year 2010 (2010 NDAA).² This

article briefly discusses the provisions contained in the original 1993 FMLA legislation;³ and it then scrutinizes the provisions contained in the new amendments, which create new categories of FMLA leave and the concurrent obligations imposed on employers who must recognize this leave entitlement.

THE 1993 FAMILY AND MEDICAL ACT

The Family and Medical Leave Act as originally signed into law in 1993 entitles eligible

employees to a minimum of 12 weeks unpaid leave during any 12-month period because of their own serious health condition, to care for certain family members who have a serious health condition, or because of the birth or adoption of a child or the placement of a foster child with an eligible employee.⁴ Over the course of the past 17 years, most employers have become cognizant of their obligations under the statute. They also have become aware of the important definitions contained in the legislation, as well as when required elements to meet the definitions have been satisfied. For example, an eligible employee is one who has been employed for at least 1 year by the employer and who has performed at least 1,250 hours of service with the employer during the previous 12-month period.⁵ Family members include a son or daughter—defined as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis—who is either under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability.⁶ Employers and medical personnel have become familiar with the statutory meaning of serious health condition⁷ that often triggers an employee's rights under the FMLA. These basic principles contained in the

original legislation have not been altered by the recent amendments. Other important features of the original FMLA legislation that have remained unchanged by the recent amendments are the obligation of the employer to allow for intermittent use of leave when medically necessary,⁸ as well as the obligations imposed on the employee to provide reasonable notice (when possible)⁹ and to provide certification from a health-care provider when required by the employer.¹⁰

Perhaps the most commonly misunderstood provision contained in the original legislation is that the requirement to allow an FMLA-protected absence from work is not necessarily a paid absence.¹¹ Whether the absence is compensated is generally determined by the particular employer's paid-leave

policy.¹² This feature of the FMLA also was unaffected by the recent amendments. While the amendments did not alter the landscape of the traditional FMLA situations, they have created new situations entitling eligible employees to FMLA-protected absences from their jobs on account of a family member's military service.

THE 2009 AND 2010 AMENDMENTS

The National Defense Authorization Act for FY 2008 expanded the FMLA by creating two new military family leave entitlements—namely, the qualifying exigency leave category and the military caregiver leave category. Employers must become familiar with these two occurrences now entitling employees to take leave under the FMLA.

***“...the amendments—
qualifying exigency leave
and military caregiver
leave—are designed to
ease the strains in such a
way that accommodates
the legitimate interests
of employers.”***



Special Agent Schott is a legal instructor at the FBI Academy.

Qualifying Exigency Leave

The first of the two new categories is known as qualifying exigency leave. It is designed to allow family members of deployed military personnel to take time away from work to provide for the exigencies that arise out of a military deployment. Like other typical FMLA absences, this category of leave is limited to up to a total of 12 workweeks of unpaid leave during the normal 12-month period established by the employer, and it is to be calculated along with other FMLA-protected absences when calculating continued eligibility.¹³ Also like other FMLA leave, qualifying exigency leave is triggered only when the deployed military member is the employee's spouse, son, daughter, or parent.¹⁴ While the 2008 NDAA only made qualifying exigency leave available based on the deployment of a member of the National Guard or Reserves, the 2010 NDAA expanded its availability to employees whose deployed relatives are members of the regular Armed Forces as well.¹⁵ Before exploring the different exigencies covered by the new statutory provision, it is important to recognize that many of the exigencies arising out of a deployment may occur prior to or following the actual deployment. The language of the amendment provides for this by stating that the leave

may be taken while "the spouse, son, daughter, or parent of the employee is on covered active duty (*or has been notified of an impending call or order to covered active duty*) in the Armed Forces."¹⁶

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actual deployment.
”**

When it has been determined that an employee is entitled to qualifying exigency leave due to a loved one's call to active duty, the exigencies they are allowed to resolve are very inclusive. The secretary of labor's seemingly exhaustive list of potential exigencies include, but are not limited to

- Military events and related activities—for example, 1) to attend any official ceremony, program or event sponsored by the military that is related to the deployment; or 2) to attend family support or assistance programs and informational briefings sponsored or promoted by the military...or

the American Red Cross that are related to the deployment;

- Childcare and school activities—for example, 1) to arrange for alternate childcare when the deployment necessitates a change in the existing childcare arrangement; or 2) to enroll in or transfer to a new school or day care facility a biological, adopted, or foster child, a stepchild, or a legal ward of the covered military member; or 3) to attend meetings with staff at a school or a day care facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences or meetings with school counselors, for a biological, adopted, or foster child, a stepchild, or a legal ward of the covered military member;
- Financial and legal arrangements—for example, to make or update financial or legal arrangements such as preparing or updating a will;
- Rest and recuperation—to spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the deployment, up to 5 days of leave for each instance of rest and recuperation;
- Postdeployment activities—for example, 1) to attend

arrival ceremonies, re-integration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the deployment; or 2) to address issues that arise from the death of the military member, such as meeting and recovering the body and making funeral arrangements;

- Additional activities—to address other events which arise out of the deployment provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of the leave.¹⁷

Not only are the potential exigencies far-reaching, they can obviously occur before, during, and after the actual deployment of the military member. They also might require intermittent absences from an employee's job, rather than a continuous absence.

As the name of this type of FMLA leave implies, the absence from work may not allow for much, if any, advance notice depending on the nature of the exigency. For this reason, when employees are entitled to qualifying exigency leave, they are only required to provide notice to their employer as is reasonable and

practical.¹⁸ Logically, the requisite 30-day notice requirement applicable to some other FMLA situations¹⁹ often is inapplicable in this particular context.

One other notable difference contained in the regulations implementing the new 2008 NDAA amendments (including the qualifying exigency leave provision) not found in the more traditional leave entitlements under the FMLA is the status of an employee's child. Typically, under FMLA provisions, an employee can only invoke FMLA for a son or daughter under 18 years of age or one who is 18 years of age or older and incapable of self-care because of a mental or physical disability.²⁰ Under the amendments providing for the military leave categories, a "son or daughter on active duty or call to active duty status" means the employee's biological, adopted,

or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status, *and who is of any age.*"²¹ The second of the two new military categories of leave—military caregiver leave—created by the 2008 NDAA amendments offers even more deviation from past categories of FMLA leave.

Military Caregiver Leave

Military caregiver leave is the second of the two new military leave provisions now found in the FMLA. Its inclusion in the legislation was based on a recommendation of the President's Commission on Care for America's Returning Wounded Warriors²² and is triggered by the unfortunate situation when a family member must help a wounded soldier in his return home. While this is a



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most difficult situation for the returning soldier, as well as his family, it also imposes obligations on employers never before contemplated by the terms of the FMLA.

First, an eligible employee who is the spouse, son, daughter, parent, or *next-of-kin* of a covered servicemember is entitled to this type of leave.²³ The next-of-kin recognition is unique to the military caregiver leave category. Its meaning, “used with respect to an individual, means the nearest blood relative of that individual.”²⁴ The regulations accompanying the new legislation prioritize those who may satisfy this definition: blood relatives who have been granted legal custody of the servicemember, brothers and sisters, grandparents, aunts and uncles, and first cousins. This lineage applies unless servicemembers have designated in writing another blood relative as their nearest blood relative for this FMLA purpose. Employers should be aware that when there has been no such designation and there are multiple family members with the same level of relationship to the servicemember, all such family members are considered the next of kin. They each, then, are entitled to FMLA leave to provide care, either consecutively or simultaneously. For example, if a servicemember has three siblings and has not

designated a blood relative to provide care, all three siblings would be considered the next of kin.²⁵

The reason these family members, or next of kin, are allowed to take FMLA leave under the military caregiver leave provision is to care for a member of the Armed Forces, “including a member of the National Guard or Reserves...who



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has a serious injury or illness that was incurred *in the line of duty on active duty* and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating and for which he or she is undergoing medical treatment, recuperation, or therapy....”²⁶ The 2010 NDAA expanded the eligibility of this type of leave for employees to care for veterans of the military as long as the injury or illness was incurred in the line of duty on active duty

(or it existed before the beginning of the active duty and was aggravated by service in the line of duty on active duty) and manifested itself before or after the member became a veteran.²⁷ Veterans must have been members of the military during the period of 5 years preceding the date on which they underwent medical treatment, recuperation, or therapy.²⁸ While the omitted portions of the amendment discuss other qualifying conditions for this leave, this category of leave is clearly meant to provide for the care of our soldiers injured in the line of duty while on active duty—the often tragic battlefield injury. Thus, this definition of serious injury or illness is clearly not synonymous with the more traditional FMLA definition of serious health condition contained in the original FMLA legislation.²⁹ Recognizing the unique and, hopefully, isolated occurrence that gives rise to military caregiver leave entitlement makes the major difference from other types of FMLA leave more understandable.

When employees find themselves in the unenviable position of being eligible to take military caregiver leave under the FMLA, they are entitled to a total of 26 *workweeks* of leave during a 12-month period to care for the servicemember.³⁰ This unique category of leave affords up to 26 weeks off

and requires employers to be without employees for that half of a year. Furthermore, because of the nature of the situation, the use of this type of leave triggers a new 12-month period for FMLA purposes. As will be discussed, up to 12 weeks of these 26 weeks can be for more traditional FMLA purposes. However, if some or all of the usual 12-week allotment has been used by the employee at the beginning of the 12-month period, the 26-week entitlement would be reduced accordingly until the end of the 12-month period normally followed by the employer. The regulation accompanying this new leave provision describes this time as a “single 12-month period.” Therefore, it begins on the first day the employee takes leave to care for the servicemember and ends 12 months after that date, regardless of the method used by the employer for other FMLA-qualifying reasons. Furthermore, if an employee does not take all of the 26 weeks entitlement during this single 12-month period, the remaining part of the 26 weeks is forfeited.³¹

While this provision contemplates a single 12-month period, the regulation does make clear that an employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for a different servicemember or to

care for the same servicemember who suffers a subsequent serious injury or illness. In no circumstance, however, is the employee entitled to more than 26 workweeks of leave within any single 12-month period.³²

Finally, the new provisions anticipate employees being entitled to military caregiver leave—as well as other, more traditional types of FMLA

“...the new provisions anticipate employees being entitled to military caregiver leave—as well as other, more traditional types of FMLA leave—during the same period of time.”

leave—during the same period of time. In that situation, it is clear that the employee is entitled to a combined total of 26 weeks of leave during that single 12-month period and that no more than 12 of those weeks can be for the more traditional qualifying reason. Thus, for example, an eligible employee may, during the single 12-month period, take 16 weeks of FMLA leave to care for a covered servicemember and 10 weeks of FMLA to care for a newborn

child. But, the employee may not take more than 12 weeks of FMLA leave to care for the newborn child, even if the employee takes fewer than 14 weeks of FMLA leave to care for a covered servicemember.³³

While some of the features of this new variety of FMLA leave are unique to it, there is consistency with past FMLA provisions relating to the employer who employs both a husband and wife. If the same employer employs both a husband and wife who are eligible for military caregiver leave, the aggregate of their leave entitlement is 26 workweeks. If the couple takes military caregiver leave in conjunction with FMLA leave due to the birth, adoption, or placement of a child with the couple (or to care for a sick parent), their total leave entitlement remains at 26 weeks, with no more than a total 12 of those weeks combined due to the birth, adoption, or placement of a child with the couple (or to care for a sick parent).³⁴ This is consistent with the long-standing limitation of 12 weeks total of FMLA entitlement for couples employed by the same employer for the birth, adoption, or placement of a child with the couple.³⁵

CONCLUSION

Among the purposes of the original Family and Medical Leave Act, as noted by

Congress, was “to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity, and to accomplish these purposes in a manner that accommodates the legitimate interests of employers.”³⁶ It is beyond dispute that the needs of families today often include situations involving military service to our country. While loved ones serve in the full-time military, the National Guard, and Reserve units, others remain to work at

their jobs and to take care of their families. The 2009 and 2010 amendments to the FMLA explicitly recognize these continuing strains being placed on military families. The two new categories of leave created in the amendments—qualifying exigency leave and military caregiver leave—are designed to ease the strains in such a way that accommodates the legitimate interests of employers. The 26-week leave entitlement of the military caregiver leave variety especially may impose quite a sacrifice on the part of certain employers. It pales in comparison, however, to the sacrifice undertaken by the family that finds itself in the position to be entitled to such leave. The amendments, like the original FMLA legislation before them, appear to have created a careful balance between the needs of employees and the interests of employers. ♦

Endnotes

¹ Public Law 110-181.

² Public Law 111-84.

³ For a thorough discussion of the basic provisions found in the FMLA, see R. Schott, “The Family and Medical Leave Act,” *FBI Law Enforcement Bulletin*, January 2006, 25-32.

⁴ 29 U.S.C. § 2601, *et seq.*

⁵ 29 U.S.C. § 2611.

⁶ 29 U.S.C. § 2611(12).

⁷ 29 U.S.C. § 2611 defines the term *serious health condition* as an illness, injury, impairment, or physical or mental condition that involves A) inpatient care in

a hospital, hospice, or residential medical care facility or B) continuing treatment by a health-care provider.

⁸ 29 U.S.C. § 2612(b)(1). Use of intermittent leave for parental bonding is within the discretion of the employer.

⁹ 29 U.S.C. § 2612(e).

¹⁰ 29 U.S.C. § 2613.

¹¹ 29 U.S.C. § 2612(c).

¹² 29 U.S.C. § 2612(d)(1) and (2).

¹³ *Supra* note 4.

¹⁴ 29 U.S.C. § 2612(a)(1)(E).

¹⁵ 29 U.S.C. § 2611 (14)(A) and (B).

¹⁶ 29 U.S.C. § 2612 (a)(1)(E), emphasis added.

¹⁷ 29 C.F.R. § 825.126(a).

¹⁸ 29 U.S.C. § 2612(e)(3).

¹⁹ 29 U.S.C. § 2612(e)(1) and (2).

²⁰ 29 U.S.C. § 2611(12).

²¹ 29 C.F.R. § 825.126(b)(1), emphasis added.

²² <http://www.dol.gov>

²³ 29 U.S.C. § 2612(a)(3), emphasis added.

²⁴ 29 U.S.C. § 2611(17).

²⁵ 29 C.F.R. § 825.127.

²⁶ 29 U.S.C. § 2611 (15) and (18),

emphasis added.

²⁷ 29 U.S.C. § 2611 (18)(B).

²⁸ 29 U.S.C. § 2611(15)(B).

²⁹ 29 U.S.C. § 2611 (11).

³⁰ 29 U.S.C. § 2612 (a)(3), emphasis added.

³¹ 29 C.F.R. § 825.127(c)(1).

³² 29 C.F.R. § 825.127(c)(2).

³³ 29 C.F.R. § 825.127(c)(3).

³⁴ 29 U.S.C. § 2612(f)(2).

³⁵ 29 U.S.C. § 2612(f)(1).

³⁶ 29 U.S.C. § 2601(b)(1) and (3).



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Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.

Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize those situations that transcend the normal rigors of the law enforcement profession.



Sergeant McGee

Sergeant Elijah McGee of the Rock Hill, Missouri, Police Department responded to a major traffic accident. Upon his arrival, Sergeant McGee saw that a vehicle had struck and become entangled with a utility pole; the driver was trapped inside. While Sergeant McGee was trying to free the victim, the vehicle burst into flames and became totally engulfed. Disregarding his own safety, Sergeant McGee obtained fire extinguishers from a local business and fought the fires, keeping them away from the driver until fire personnel arrived.



Officer Stricklin

Officer Heather Stricklin of the Brighton, Colorado, Police Department responded to an accident where the driver was trapped in a burning vehicle. Immediately, Officer Stricklin tried to put out the flames—unsuccessfully—with the extinguisher from her patrol car. As fire and emergency personnel arrived, she used a blanket and tarp in conjunction with her own body to shield the victim from the flames. Officer Stricklin remained to comfort and calm the driver during the 20-minute extrication of the victim by fire personnel. During the ordeal, Officer Stricklin's uniform became singed, and she required treatment for exposure to flames, smoke, and toxic chemicals.

Nominations for the *Bulletin Notes* should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Quantico, VA 22135.

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Patch Call



The background of the Pocatello, Idaho, Police Department patch features a depiction of the snow-topped mountains and trees surrounding the city, as well as the year the agency was established. The department's police badge, in the center of the patch, contains the state seal.



The patch of the Reading, Ohio, Police Department shows a rainbow bridge, the first in Ohio and 1 of 4 remaining nationwide. Also depicted are the flags of the United States and Ohio. Below the flags is the city's seal, which contains the year the community was founded and the German words for "We try our best."